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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/289,208	04/09/1999	CHARLES A. HOWLAND	W0490/7007/R	8331

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MAINE & ASMUS
100 MAIN STREET
P O BOX 3445
NASHUA, NH 03061-3445

EXAMINER

GUARRIELLO, JOHN J

ART UNIT	PAPER NUMBER
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1771

DATE MAILED: 07/08/2002

16

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/289208

Applicant(s)

Howland

Examiner

John Guarnicelli

Group Art Unit

1791

AS-16

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

- ☒ Responsive to communication(s) filed on 4/3, 4/2002, 5/16/02
- ☒ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 1, 3, 4, 6-8, 10-16 is/are pending in the application.
- Of the above claim(s) 16 is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☒ Claim(s) 1, 3, 4, 6-8, 10-15 is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☐ Claim(s) _____ are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been received.
- ☐ received in Application No. (Series Code/Serial Number) _____.
- ☐ received in this national stage application from the International Bureau (PCT Rule 1.7.2(a)).

*Certified copies not received: _____

Attachment(s)

- ☒ Information Disclosure Statement(s), PTO-1449, Paper No(s) 115
- ☐ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Interview Summary, PTO-413
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Other _____

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DETAILED ACTION

15. The Examiner acknowledges papers # 10-12, the extension of time, the amendment, and the revocation of power of attorney, all of 4/3/2002; paper # 13 , letter of acceptance for the change of address and new power of attorney of 4/4/2002; paper # 14 the Terminal disclaimer of 4/3/2002; and the IDS of paper # 15 of 5/16/2002.

16. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Election/Restriction

17. Newly submitted claim 16 is directed to an invention that is independent or distinct from the invention originally claimed for the following reasons:

Claim 16 is directed to the method of making a protective fabric, which is a different invention from the claim article, protective fabric.

Invention I, the article of a protective fabric and, II, the method of making a protective fabric with a coating applied to the protective fabric, are

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related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case the product as claimed can be made by another and materially different process which would involve applying the epoxy resin without the resist material .

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claim 16 is withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Claim Rejections - 35 USC § 103

18. Claims 1, 3, 4, 6-8, 10-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dunbar 5,579,628.

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Dunbar is maintained substantially as in paper # 9, page 6, paragraph # 20. Applicant's arguments regarding the matchup of the warp and fill yarns has been considered and reviewed, but the arguments are not persuasive because Dunbar does describe the warp is different from the fill. Dunbar describes the warp may be of a different tenacity, modulus, filament number, filament or total denier, (column 7, lines 56-65). Dunbar implies that the warp is different than the fill, i.e. total denier, (column 7, line 63). Contrary to applicant's allegation, there is a difference in the warp and fill yarns as described by Dunbar, (column 7, line 63). Regarding applicant's arguments about densely interwoven yarns, there is no quantification of the densely interwoven yarns in the claims, thus there is nothing in the current claim to distinguish such from the prior art. Contrary to applicant's arguments, there is nothing in the claims regarding the shape of the warp cross section. The Examiner notes applicant's discussion of the figures, but there is no language relating what is shown in the figures to the instant claims. The claimed

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invention is still found to be obvious to one of ordinary skill in this art when taking the invention as a whole.

19. Claims 14, 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dunbar 5,579,628 in view of Harpell 4,403,012

Rejection is maintained substantially as in paper # 9 of 12/3/2001.

Applicant's arguments regarding the coating of the fabric have been considered but they are not persuasive because Harpell '012 describes coated fibers which can be epoxy resins, (column 3, lines 44-68). Harpell '012 describes these epoxy resins can be used in ballistic resistant materials, (column 4, lines 15-60). Additionally, with respect to the rejection of Dunbar in view of Harpell '012, it appears applicant mistakenly argues the Harpell '280 reference instead of the applied '012 patent since the '012 patent has no figures. It is the Examiner's position that the claimed invention is still found to be obvious to one of ordinary skill in this art when taking the invention as a whole.

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Terminal Disclaimer

20. The terminal disclaimer filed on 4/3/2002 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of 5,565,264 has been reviewed and is accepted. The terminal disclaimer has been recorded.

21. Rejections not maintained are withdrawn because of the amendment to the claims and the submission of the proper Terminal disclaimer which withdraws the double patenting rejection over '264.

22. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first

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reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

23. Any inquiry concerning this communication or earlier communications from the examiner should be directed to John J. Guarriello whose telephone number is 703-308-3209. The examiner can normally be reached on Monday to Friday from 8 am to 4 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris, can be reached on (703) 308-2414. The fax phone number for the organization where this application or proceeding is assigned is 703-305-5408.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.




John J. Guarriello:gj

Patent Examiner

June 21, 2002

July 2, 2002

July 3, 2002



TERREL MORRIS
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1700